

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

R. ALEXANDER ACOSTA)
SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF LABOR,)

Plaintiff,)

v.)

TEQUILAS RESTAURANTS, INC.)
(NEBRASKA), TEQUILAS RESTAURANTS)
INC. (KANSAS), TEQUILAS RESTAURANTS,)
INC. (COLORADO), and MIGUEL ESPARZA)

Defendants)

CIVIL ACTION FILE
NO. 7:18-cv-5005

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

COME NOW Defendants Tequilas Restaurants, Inc. (Nebraska), Tequilas Restaurants Inc. (Kansas), Tequilas Restaurants, Inc. (Colorado), and Miguel Esparza (collectively "Defendants"), by and through the undersigned counsel, and for their answer to Plaintiff's Complaint state as follows:

I

Responding to Paragraph I of the Complaint, Defendants deny that the events alleged in the Complaint happened as stated, and deny that they happened in any particular judicial district. Defendants further deny that venue is appropriate.

II

Responding to Paragraph II of the Complaint, Defendants admit that Tequilas Restaurants, Inc. (Nebraska) is a Nebraska corporation, has its principal place of business in McCook, Nebraska, and operates restaurants. Defendants further admit that Tequilas Restaurants, Inc. (Kansas) is a Kansas corporation; that Tequilas Restaurants, Inc. (Colorado) is a Colorado corporation; and that these corporations operate restaurants. Defendants admit that Miguel Esparza is an owner of these corporations and that some of

his functions entail acting, in some way, in the interests of Defendants in relation to their employees. Defendants deny all remaining allegations in Paragraph II of the Complaint.

III

Responding to Paragraph III of the Complaint, Defendants deny the allegations.

IV

Responding to Paragraph IV of the Complaint, Defendants admit that the three corporations combined in the manner Plaintiff suggests generated at least \$500,000 in annual revenue at relevant times. Defendants deny the remaining allegations.

V

Responding to Paragraph V of the Complaint, Defendants deny the allegations.

VI

Responding to Paragraph VI of the Complaint, Defendants deny the allegations.

VII

Responding to Paragraph VII of the Complaint, Defendants deny the allegations.

VIII

Responding to Paragraph VIII of the Complaint, Defendants deny the allegations.

IX

Responding to Paragraph IX of the Complaint, Defendants deny the allegations and deny that Plaintiff is entitled to a judgment, injunction, or any relief whatsoever.

GENERAL DENIAL

Defendants deny each and every allegation contained in Plaintiff's Complaint unless specifically admitted herein, including the relief requested in any prayer for relief included in non-numbered paragraphs.

AFFIRMATIVE DEFENSES AND STATEMENTS

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

2. The Court lacks personal jurisdiction over Tequilas Restaurants, Inc. (Kansas), Tequilas Restaurants, Inc. (Colorado), and Miguel Esparza.

3. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

4. Defendants' alleged actions or omissions giving rise to alleged violations of the Fair Labor Standards Act ("FLSA") were done in good faith and in conformity with and in reliance on written administrative regulations, orders, rulings, approvals, or interpretations of the Departments of Labor and Transportation, or any administrative practice or enforcement policy of the Departments of Labor and Transportation.

5. Defendants' alleged actions or omissions giving rise to the alleged violations of the FLSA were in good faith and Defendants had reasonable grounds for believing that any acts or omissions were not a violation of the FLSA.

6. Because Defendants' employees were compensated in reliance upon information provided by such employees, among other reasons, some or all of Plaintiff's claims are barred in whole or in part by the doctrines of unclean hands and estoppel.

7. Plaintiff's claims are barred by the doctrines of judicial estoppel, waiver, and/or laches.

8. Some or all of Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

9. Some of the employees on whose behalf Plaintiff seeks to recover are exempt from the overtime requirements of the FLSA because they were paid on a salary basis and were employed in bona fide executive, administrative, and/or professional capacities within the context of 29 U.S.C. § 213.

10. Any Defendant that employed individuals referenced in the Complaint is entitled to a tip credit to the minimum wage pursuant to 29 U.S.C. §203(m) and 29 C.F.R. §531.59.

11. One or more defendants are not an “employer” within the meaning of the FLSA.

12. Employees who failed to accurately declare their tips cannot establish damages or minimum wage liability by a just and reasonable inference.

13. Defendants reserve their right to introduce further affirmative defenses between now and trial, including the right to amend their answer to add additional defenses as discovery warrants.

WHEREFORE, Defendants respectfully pray for a final judgment in their favor which (1) dismisses with prejudice each and every claim asserted by Plaintiff against Defendants in this case; (2) declares Defendants to be the prevailing parties on each dismissed claim; (3) denies Plaintiff the judgment and relief requested in its Complaint; and (4) grants Defendants such other and further legal and equitable relief as may be just and proper under the circumstances.

Dated: April 23, 2018

TEQUILAS RESTAURANTS, INC., Defendant.

By: REMBOLT LUDTKE LLP
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By: /s/ Mark A. Fahleson
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on April 23, 2018.

/s/ Mark A. Fahleson

Mark A. Fahleson (19807)

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